The New Regulation S-P Amendments and What They Mean for Lenders in Fund Finance

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The SEC's 2024 amendments to Regulation S-P introduce the most comprehensive update to federal privacy and data security standards for SEC-regulated institutions since the rule was adopted. While the amendments are directed at investment advisers, registered funds, broker dealers, and transfer agents – not lenders – fund finance deal teams are already seeing the effects.

We have seen sponsors and their counsel increasingly focused on the changes relating to their need to due diligence their service providers, and their need to obtain notice within 72 hours of a service provider data breach. For banks and other regulated lending institutions, this raises important questions around regulatory scope, operational expectations and market standards.

This article summarizes the key regulatory changes, why sponsors are reacting the way they are, and why lenders generally should not be expected to take on Regulation S-P obligations when they are already subject to their own robust data privacy regimes.

Overview of the 2024 Regulation S-P Amendments

Regulation S-P implements the privacy provisions of the Gramm-Leach-Bliley Act (GLBA) for SEC-regulated entities. The most relevant part of the revised rule for the purposes of this article requires a covered institution to establish, maintain and enforce “written policies and procedures reasonably designed to require oversight, including through due diligence and monitoring, of service providers.” Those policies and procedures “must be reasonably designed to ensure service providers take appropriate measures to: (A) protect against unauthorized access to or use of customer information; and (B) provide notification to the covered institution as soon as possible, but no later than 72 hours after becoming aware that a breach in security has occurred resulting in unauthorized access to a customer information system maintained by the service provider.”

Importantly, the rule does not require that a covered person “obtain promises from” a service provider to take appropriate measures to protect unauthorized access to personal information provided to it by the covered institution. In this regard, when the amendments were proposed, they did contain a “written contract” requirement relating to service providers; however, the SEC specifically eliminated this requirement, in part to address comments to the effect that covered institutions should have the ability to take a “facts and circumstances” approach to overseeing their service providers.

Larger institutions including registered investment advisers with $1.5 billion or more in assets under management were required to comply with the amended regulations by December 3, 2025; all other covered institutions that don’t meet the size thresholds must comply with the amended regulations by June 3, 2026.

Why Fund Sponsors Are Heightened in Their Sensitivity

The amendments materially raise expectations for private fund advisers – particularly SEC-registered advisers – and for affiliated service providers. As advisers prepared and are preparing for these compliance deadlines, fund finance transactions are feeling the downstream effects.

Several pressure points are emerging:

1. Increased caution about sharing investor data. Investor commitments, names and contact information can constitute “customer information” under Regulation S-P. Advisers feel pressure to demonstrate careful handling of such data.
2. Sensitivity around vendor governance. Because the amended rule requires advisers to impose cybersecurity-related obligations on their vendors, many sponsors are re-evaluating how third parties – including

lenders – handle any investor or fund-level personal data.

3. Heightened transactional rigor. Counsel for sponsors are increasingly looking for comfort that lenders have comparable safeguards, even if a lender is a heavily regulated financial institution subject to detailed data protection requirements.

Why Lender Banks Should Not Be Required to "Comply with Regulation S-P"

In recent transactions, some sponsors have attempted to require lenders to agree affirmatively to maintain systems in accordance with Regulation S-P's requirements. These requests are generally misplaced.

Banks and other regulated lending institutions, such as credit unions and thrifts, typically would not be covered institutions under Regulation S-P unless they separately fall within the rule's scope (e.g., if they act as a broker-dealer or SEC-registered adviser).

Most fund finance lenders are instead federally regulated insured depository institutions that are already subject to the GLBA privacy framework through prudential regulators and bound by extensive cybersecurity, vendor risk, and data protection rules, many of which are more prescriptive than Regulation S-P.

Forcing a lender to "comply with Regulation S-P" can create unnecessary ambiguity or even legal conflict. Bank regulators often impose standards that diverge from or exceed SEC requirements. Contractually binding a lender to the wrong regulatory regime adds no practical protection for the sponsor and may introduce operational risk. Moreover, advisers are not required by Regulation S-P to obtain detailed commitments from service providers, only to satisfy a due diligence requirement.

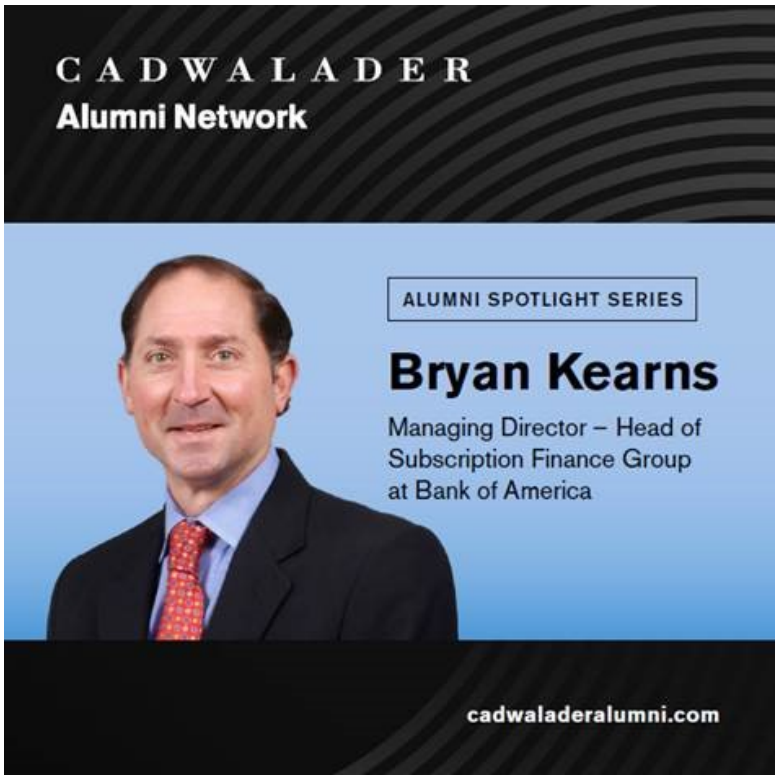
The more appropriate (and market-aligned) approach is for lenders to confirm that they maintain information-security and data protection programs consistent with applicable law and supervisory expectations. When an adviser is dealing with a heavily regulated lender it should be able to satisfy this requirement without obtaining detailed contractual commitments from the lender. Similarly, some lenders have gotten comfortable agreeing to provide notice of any data breach within 72 hours after it becomes aware of any such breach, as such banks are already subject to an even more stringent notice requirement in that respect.

A Practical Path Forward in Fund Finance Transactions

As the industry recently approached the 2025 Regulation S-P compliance deadline, and as it approaches the 2026 deadline, fund finance lenders should expect continued focus on the 72-hour data breach notice obligation. By grounding negotiations in the proper regulatory framework, parties can protect investor information without imposing inappropriate or duplicative obligations on lenders.

Cadwalader Alumni Spotlight: Bryan Kearns, Bank of America

December 12, 2025



From navigating complex transactions as a junior associate at Cadwalader to leading innovative financing solutions at Bank of America, **Bryan Kearns**, now Managing Director – Head of Subscription Finance Group at Bank of America, has built a career defined by diligence, collaboration, and curiosity.

In this Alumni Spotlight, Bryan sits down with **Tim Hicks**, current partner and Co-Head of the Fund Finance Group at Cadwalader, to reflect on his career journey, the mentors who shaped his leadership style, and how his time at Cadwalader continues to influence his approach to teamwork, problem-solving, and professional growth.

Time at Cadwalader

What was the biggest learning curve that you had to overcome when you first started?

Bryan Kearns: I would break it down into two parts. The first was learning the Cadwalader processes and protocols, including the individuals to reach out to and connect with for driving a transaction to closing. For example, the parties you would need to go to for opinion review and sign-off.

The second was gaining an understanding of all the ancillary or constituent documents that were required to be assembled and executed prior to a trade's closing. I think in achieving both of those, the former was accomplished by connecting with and seeking guidance from mid-level and junior associates. As for learning all of the constituent and ancillary transaction documents, that came from spending evenings with the paralegals who were assembling the closing binders.

To me, those were probably the most difficult things starting out as a junior associate; learning your way around the organization and understanding what materials are required to bring the transaction to closing.

Read more **here**.

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We've reimagined the Cadwalader Alumni Network to celebrate and strengthen the connections that begin here and extend far beyond. Explore the redesigned website at **www.cadwaladeralumni.com** and register today to stay connected.

A Holiday Tale - The Separation of Church (Security Agreements) and State (Laws) in CayLux Security Arrangements

December 12, 2025

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One of the common threads that runs through the granting of security over Cayman and Luxembourg property, be it capital call rights under an LPA, bank accounts or shares/interests in CayLux vehicles, is that neither jurisdiction has a central register or forum where a party is required to 'file' the security interest with a state body - either for reasons of priority or by way of placing third parties on notice.

New lenders in the market (of which there have been many in recent years!) and their internal legal counsel often find this fact slightly odd when compared to jurisdictions with public filing systems. Accordingly, the differences between what the laws of Cayman or Luxembourg provide for when compared to the security arrangements that are put in place in other jurisdictions is a common discussion topic when new entrants are getting comfortable with non-US vehicles appearing in their deals.

The absence of public or post-closing filings for security registration does not however mean that the laws of Cayman and Luxembourg have nothing to say on the interests of secured creditors. This note summarizes the most frequently seen intersections of the laws of Cayman and Luxembourg with security taken as part of fund finance deals.

Cayman - In Cayman the granting of security is primarily structured by contractual arrangements that allow a secured party to take possession of property in an enforcement scenario without the involvement or approval of the courts. There is no specific law or statute dealing with security interests and how they should or must be documented or put in place.

Each of the Companies Act and the Exempted Limited Partnership Act are crystal clear however in protecting the 'bankruptcy remote' nature of security over the assets of a Cayman company or limited partnership and provide that where a winding up order has been made, or restructuring officers have been appointed, in respect of a company or limited partnership (as applicable) a creditor who has security over the assets of such company or limited partnership is entitled to enforce that person's security without the leave of the Court.

The only minor wrinkle that does arise in Cayman between security documentation and the general law is the so-called 'Section 99' issue. This only occurs where there is security over the shares of a Cayman company or the call rights of a Cayman company to require investors to subscribe for further shares (in the latter case, if the company is structured as a capital commitment/call private equity fund vehicle). Section 99 of the Companies Act (a section also applicable to limited partnerships) provides that when a winding up order has been made in respect of a company "*any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the*

commencement of the winding up is, unless the Court otherwise orders, void". The wrinkle that arises is that if a lender seeks to: (i) enforce share security in a NAV deal; or (ii) call on capital of investors in a subline deal, following a winding-up order being made in respect of that company and they wish to update the register of members or issue shares to reflect this action then Section 99 may, in some potential but unlikely scenarios (the best example being if the service provider that maintains of the register of members is refusing to act without court direction; though even in that scenario there would be alternative options) require them to seek the approval of the Court in order to do so. There are steps commonly taken pre-closing in either case to avoid the Section 99 issue arising and it is important to note that in either scenario the worst-case result is likely additional interaction with lawyers(!) to make what would be an uncontroversial Court application for approval, with the enforceability of the security totally unaffected in the interim period.

Luxembourg - In Luxembourg security and collateral arrangements are specifically legislated for by the Financial Collateral Law (FCA). The FCA sets out a core set of requirements to be met in order for a grant of security to gain the benefits afforded to secured parties under it, but it does not require any public or post-closing filings to be made in Luxembourg.

One minor point of discussion that has arisen in recent years is the interaction of the FCA (which protects security arrangements taken in accordance with its terms from being affected by insolvency and bankruptcy proceedings so that they are 'bankruptcy remote') and the recently introduced Reorganization Law which affords parties in reorganization proceedings with certain protections from their creditors, including the suspension of payment obligations.

While there is a broad consensus that security interests taken in accordance with the FCA are unaffected by the opening of reorganization proceedings, there are certain technical points that have been raised about how an enforcement trigger in a security arrangement (if drafted to require a debt to become due and payable in order for security to be enforced) would be viewed by the Luxembourg Courts and whether it would result in a potential delay in a party being able to enforce its security. It would not, however, in any way invalidate such security. While the issue is a very technical one, it is now easily sidestepped by carve-out language which is now commonly added in Luxembourg documents 'for the avoidance of doubt' on this issue, so that there is no question of whether an enforcement could be affected by the Reorganization Law.

Conclusion - The good news underscoring any discussion on CayLux security arrangements is that, while they differ to some jurisdictions in not having public filings, in both Cayman and Luxembourg the rights of creditors are strongly protected by common law or statute and the Courts of both jurisdictions could easily be described as being very 'creditor friendly' when called upon to enforce security interests and contractual arrangements. Lenders in the fund finance market continue to be comfortable with the protections afforded to them in both Cayman and Luxembourg and while defaults in fund finance are typically remote events, strong precedent exists in each jurisdiction for the fast and effective enforcement of the types of security arrangements utilized in the fund finance market.

Fund Finance x Crypto: Luxembourg

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Fund Finance x Crypto: Luxembourg

Update prepared by Saniyé Tipirdamaz, Thomas Allain, Lara Forte and Romain Bordage (Luxembourg)

With the growth of fund finance, the **Mourant** team have all observed cross-over between areas such as securitisation, structured finance, and the insurance sector, blurring the lines between historically separate areas. The next frontier is rapidly coming into focus: crypto. Luxembourg is consistently at the forefront of financial innovation and has already adopted a strong legal framework on virtual assets, paving the way to fund tokenisation in a fund finance context. While crypto presents some challenges to fund finance, it may also provide some novel solutions.

This is the third and final instalment in the **Mourant** team's Fund Finance x Crypto – the next frontier series. In **the first update**, they discussed security over custodied digital assets from a Cayman Islands law perspective, with **the second instalment** looking at the advent of tokenized investment funds.

In this final update, they will give the Luxembourg perspective on the use of custodied virtual assets in NAV financing and the advent of tokenized funds units in the context of subscription lines.

1. Custodied virtual assets: a NAV finance approach

A progressive legal framework

Luxembourg has always been at the forefront of financial innovation and has taken the lead in Europe on the legal framework regarding virtual assets:

- As early as 2013, companies and funds were allowed to issue equity or debt instruments in an electronic form.
- Luxembourg was the first EU Member State to recognise blockchain transaction as equal to traditional transactions and to allow the use of distributed ledger technology (DLT) for the registration and transfer of securities.
- The framework was strengthened by allowing the issuance of securities on the blockchain by traditional credit institutions.
- The 'DLT Pilot Regime', implemented into Luxembourg law, provides the legal framework for trading and settlements of transactions in crypto-assets that qualify as financial instruments under MIFID II. It constitutes a derogatory regime for market providers using DLT which discharges them from certain regulatory obligations imposed by MIFID II.
- Finally, Luxembourg introduced the new concept of 'controlling agent', which would act as a delegate of a traditional depositary for the custody of dematerialised securities issued on DLT.

The Luxembourg framework has since then been supplemented by the MICA Regulation, which aims at establishing measures to protect consumers and improve trust and security in crypto-asset services.

As a result of this progressive and pragmatic legislative package, Luxembourg has positioned itself to provide the industry with legal certainty for the issuance of instruments directly on the blockchain. It is hoped that these legal innovations will help enhance liquidity and broaden the distribution of financial products.

Another effect might be that lenders will increasingly face Luxembourg funds holding virtual assets, notably in a NAV financing context. As such, it may be interesting to consider the question of whether and how these assets can be pledged.

Read the full article **here**.

Fund Finance Expert Talk With Kristina Kulikova

December 12, 2025

The new episode of the Praxio Fund Finance Expert Talk hosted by Michael Mbayi, with Ian Wiese, Managing Director at Barings is available!

Tune into this episode if you want to learn about:

- Ian’s career path
- Fund Finance market updates
- Secondaries market update
- Role of insurance money in Fund Finance

Watch at it now **here**.

Fund Finance Hiring

December 12, 2025

Fund Finance Hiring

Here is who's hiring in fund finance:

Harneys (Luxembourg) is seeking associates with three to six years of relevant experience for its Fund Finance, Investment Funds and Corporate practices in Luxembourg. Qualified candidates will have experience in one of subscription finance, NAV financings, leverage finance, fund formation, securitization, or general corporate and commercial matters (including mergers, acquisitions and restructuring). Applications of interest should be sent to Cyrielle Nicolas **cyrielle.nicolas@harneys.com**

Santander is looking for a Structured Finance VP Team Lead in New York. The candidate will be responsible for managing the underwriting and portfolio management of a defined portfolio of Fund Finance transactions across NAVs, subscription, ABLs and other related facilities. The position will work closely with the product teams to present and defend business opportunities to risk. The candidate will lead credit underwriting with risk and ensure all required portfolio management tasks are completed. Please contact **erika.wershoven@santander.us** with your resume and subject line *FF team lead*.

Partners Group is seeking a Structured Product Lawyer to join their Structuring Solutions team out of the New York or London office to contribute to the global set of structured product offerings, including new structured product opportunities, Collateralized Fund Obligations, Collateralized Loan Obligations, Rated Feeders and other similar structures. This individual will also work very closely with the Private Credit team. Partners Group's Structuring Solutions team is responsible for developing highly innovative investment structures for institutional and private investors globally. Learn more **here**.

Juniper Square is seeking Account Executives in New York, Boston, Chicago, and Miami to join the private equity sales team. This team is primarily focused on selling fund administration solutions to PE investment managers. Juniper Square is already one of the fastest-growing administrators in real estate and venture capital, and private equity is the company's next area of focus. Learn more **here**.

Cadwalader, Wickersham & Taft LLP is seeking associates with three to six years of relevant experience for its Fund Finance practice in New York, Charlotte or London. Qualified candidates will have experience in syndicated lending, commercial lending, leverage finance, fund formation, CLOs, asset-based lending, NAV financings or acquisition financings. Candidates must possess excellent academic credentials and solid legal experience. Selected candidates will get extensive interaction with preeminent bank, asset manager and lending clients. If interested, please reach out to Margaret Cart at **Margaret.Cart@cwt.com**.